

### **REMARKS**

This Application has been carefully reviewed in light of the Office Action mailed July 7, 2005. At the time of the Office Action, Claims 12-21, 23 and 30-35 were pending in this Application. Claims 12-13 and 15-19 were allowed. Claims 14, 20, 21, 23 and 30-35 were rejected. Claims 14 and 33 were indicated as allowable subject to being amended as noted in the Office Action. Claims 14, 20, 23, 20, 31 and 35 have been amended to further define various features of Applicants' invention. Claims 1-11, 22 and 24-29 were previously canceled due to an election/restriction requirement. Claims 21, 32, 33 and 34 have been canceled without prejudice or disclaimer by this response. Applicants respectfully request reconsideration and favorable action in this case.

#### **Election Restriction Requirements**

Applicants note with appreciation that the Examiner has agreed to consider all pending claims. Applicants request that the Examiner consider FIGURE 2 when reviewing the amended claims.

#### **Abstract Objection**

The abstract of the disclosure was objected to by the Examiner because the abstract was not a concise statement of the technical disclosure of the patent. Applicants have submitted a replacement abstract with this response and request approval of the replacement abstract.

#### **Rejections under 35 U.S.C. § 112**

Claims 14 and 31-33 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants appreciate the Examiner's indication that Claims 14 and 33 would be allowable if written to overcome the rejections under 35 U.S.C. §112, second paragraph, as set forth in the Office Action and to include all of the limitations of the base claim and any intervening claims.

Claim 14 has been amended by deleting the word "type". Applicants request withdrawal of all rejections and allowance of Claim 14 as amended.

Claim 31 has been amended to include the phrase "sidewall assemblies mounted on the railway car underframe adjacent to the floor assembly. . . ." Applicants request withdrawal of the rejection under 35 U.S.C. §112, 2nd paragraph, with respect to amended Claim 31. In addition, Claim 31 has been amended by including some, but not all, limitations from Claims 32 and 33. Since Claim 33 was indicated as allowable, Applicants respectfully request withdrawal of all rejections and allowance of Claim 31 as amended.

Claims 32 and 33 have been cancelled without prejudice or disclaimer.

**Rejections under 35 U.S.C. § 102**

Claim 31 was rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,494,651 issued to Mark Y. Zhan et al. ("Zhan"). Applicants respectfully traverse and submit the cited art does not teach all of the elements of the claimed embodiment of the invention.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1997). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applicants respectfully submit that the cited art as anticipatory by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

To expedite allowance of this Application, Claim 31 has been amended to include some, but not all, limitations of Claims 32 and 33 as previously noted. Applicants request allowance of Claim 31 as amended.

**Rejections under 35 U.S.C. §103**

Claim 32 was rejected under 35 U.S.C. §103(a) as being unpatentable over Zhan in view of U.S. Patent No. 6,626,623 issued to David A. DeLay ("DeLay"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious. To expedite allowance of this application, Claim 32 has been canceled without prejudice or disclaimer.

Claims 20, 21, 23, 30 and 34-35 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,138,580 issued to Mell R. Thoman ("Thoman") in view of U.S. Patent No. 6,402,446 issued to Rudolph E. Nadherny et al. ("Nadherny") in view of Zhan. Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, do not render the claimed embodiment of the invention obvious.

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Furthermore, according to § 2143 of the Manual of Patent Examining Procedure, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicants' disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Claim 20 has been further amended to define various features of Applicants' invention including, but not limited to, "a plurality of metal support posts disposed between the interior surface and the exterior surface of each sidewall assembly . . . each sidewall assembly defined in part by a pocket formed in the interior surface of one of the sidewall assemblies adjacent to one of the metal support posts . . . ." Applicants respectfully submit that Thoman does not show or teach an insulated boxcar having a plurality of metal support

posts disposed between the interior surface and the exterior surface of each sidewall assembly as defined in amended Claim 20.

Applicants further submit that neither Nadherny nor Zhan show or teach a cargo restraining system or cargo anchors in combination with an insulated boxcar as defined in amended Claim 20. For example, neither Nadherny nor Zhan show or teach various features of Applicants' invention as defined in amended Claim 20 such as, but not limited to, "a plurality of thermal insulators disposed between each sidewall anchor assembly and the associated metal support posts to improve heat transfer ratings of the insulated boxcar."

Applicants further submit that the Examiner has not cited any basis to combine either Nadherny or Zhan with Thoman. Even if Nadherny and/or Zhan were combined with Thoman, the resulting combination would not result in Applicants' invention as defined in amended Claim 20. Applicants request withdrawal of all rejections and allowance of Claim 20 as amended.

Claim 23 as amended calls for various features of Applicants' invention which are neither shown nor taught in any of the references cited by the Examiner. For example, Claim 23 calls for insulated boxcar as defined in amended Claim 20 in combination with "cargo anchors disposed within the floor assembly proximate the openings in the sidewall assemblies . . . no other cargo anchors disposed within the floor assembly." Applicants respectfully submit that the Examiner has not cited any reference showing cargo anchors disposed within a floor assembly as defined in amended Claim 23.

Claim 30 has been amended to call for various features of a boxcar which are neither shown nor taught by the references cited by the Examiner. For example, Claim 30 expressly calls for "A boxcar . . . cargo anchors disposed within the floor assembly only at locations proximate the respective openings in each sidewall assembly. . . no cargo anchors disposed within other portions of the floor assembly." Zhan shows anchors 12 and 14 disposed throughout insulated car floor 16. See, for example, FIGURES 5 and 6 of Zhan. Applicants respectfully request withdrawal of all rejections and allowance of Claim 30 as amended.

Claim 35 has been amended to call for a boxcar as defined in Claim 30. Applicants request withdrawal of all rejections and allowance of Claim 35 as amended.

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**Information Disclosure Statement**

Applicants enclose an Information Disclosure Statement and PTO Form 1449, with a copy of the reference and a check in the amount of \$180.00, for the Examiner's review and consideration.

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INTENTIONALLY LEFT BLANK.**

**CONCLUSION**

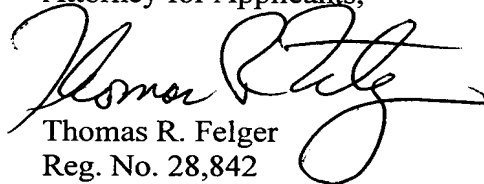
Applicants have now made an earnest effort to place this case in condition for examination and allowance. Applicants respectfully request reconsideration of Claims 12-20, 23, 30, 31 and 35 as amended.

Applicants believe no fees are due at this time, however, the Commissioner is hereby authorized to charge any fees to Deposit Account No. 02-0384 of Baker Botts L.L.P. in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2599.

Respectfully submitted,

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Date: 17 AUG 2005

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